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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

October Term, 1930.

No. 23.

CHARLES H. STANGE,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF AMICUS CURIAE.

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Amicus Curiae.

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INDEX.

	Page
Motion for leave to file Brief as Amicus Curiae	1
Preliminary Statement	2
Summary of Argument	3
The situation under the Revenue Act of 1928 with respect to waivers executed after the statute of limitations has run	4
Under the Revenue Act of 1926	6
By the provisions of the Revenue Act of 1924 waivers given after its enactment are invalid if collection was barred at the date of its enactment	8
Waivers executed after the statute of limitations has run and prior to the enactment of the Revenue Act of 1924	8
The statute of limitations contained in the Revenue Acts not only bars the remedy but also extinguishes the liability	13
The provisions of the Revenue Acts of 1926 and 1924 dealing with waivers and the provisions of the Revenue Act of 1921 are in pari materia and should be considered together	16
Regardless of what may be the conclusion as to the validity of a waiver executed after the statute of limitations has run and before the enactment of the Revenue Act of 1924, the waiver in the present case only waived assessment and did not waive collection	18
Conclusion	19

CASES CITED.

Alexander v. Alexandria, 5 Cranch. 7 16
Bashara v. Hopkins, 290 Fed. 592 14
Blatchford v. Harris, 115 Ill. App. 160 19
Bowers v. New York & Albany Lighterage Co., 273 U. S. 346 ..... 12, 13, 18, 19
Citizens Bank v. Miller Link Lumber Co., 16 Fed. (2d) 163, 164 14
Diescher v. Commissioner, 18 B. T. A. 353 12
Graham v. Dupont, 262 U. S. 234 14
Jacobs Bros. Co., 19 B. T. A. 315 6
John Barth Co. v. United States, 27 Fed. (2d) 782, 784 14
Joy Floral Co. v. Commissioner, 29 Fed. (2d) 865 16
Pictorial Printing Co. v. Commissioner, 38 Fed. (2d) 563 17
Russell v. United States, 278 U. S. 181 ..... 8, 13, 21
Seaman v. Bowers, 297 Fed. 371 12
Toxaway Mills v. United States, 61 Ct. Cl. 363 14
United States v. Updike, 281 U. S. 489, p. 496 ..... 4, 10
White v. Hood Rubber Co., 280 U. S. 253 17

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ON CERTIORARI TO THE COURT OF CLAIMS.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

Comes now the undersigned and respectfully moves for leave to file the annexed brief for the Holmes Manufacturing Company, as a friend of the Court.

Counsel for both parties have consented to the filing of this brief.

The undersigned is counsel for the Holmes Manufacturing Company in its suit against the United States now pending in the United States District Court for the District of Massachusetts (Law Docket No. 4110 therein), which presents the same question presented in this case and in order that the Holmes Manufacturing Company may be heard in the determination of its rights in said suit, it is desired to file this brief.

JOHN E. HUGHES.

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BRIEF OF AMICUS CURIAE ON BEHALF OF THE HOLMES MANUFACTURING COMPANY.

Preliminary Statement.

May It Please the Court:

The decision of this case will be determinative of the same question presented in the District Court in Massachusetts in the case of the Holmes Manufacturing Company, for which the undersigned is counsel and the Court's permission to file this brief is greatly appreciated.

In the briefs of the parties there has appeared a statement of the grounds upon which the jurisdiction of this Court is invoked, the question presented, the statute involved and the facts of the case which need not be repeated here.

SUMMARY OF ARGUMENT.

I.

When the *Revenue Act of 1928* was being enacted in Congress the Treasury Department was cognizant of the question presented in pending cases concerning whether waivers executed after the statutory period of limitation had expired were valid and made an attempt to have Congress ratify such waivers. This Congress refused to do.

With reference to waivers executed after its enactment, the express provisions of the *Revenue Act of 1928* render them invalid except to a limited extent.

Waivers executed after the statute of limitations has expired and after the enactment of the *Revenue Act of 1926* are rendered invalid by the express provisions of that Act if collection of the tax was barred at the date of the enactment of that Act.

Waivers executed after the enactment of the *Revenue Act of 1924* and after the statute of limitations has run are rendered invalid by the express provisions of that Act, if the collection of the tax was barred at the date of the enactment of that Act.

The *Revenue Acts of 1926 and 1924*, and the *Revenue Act of 1921* are in *pari materia* and should be considered together in determining the intention of Congress.

Those decisions which sustain the validity of waivers executed after the enactment of the *Revenue Act of 1924* are based partly on the erroneous assumption that statutes of limitation are to be construed strictly in favor

AMICUS CURIAE BRIEF

of the Government (In *United States v. Updike, 281 U. S. 489, at page 496,* this Court stated the rule to be otherwise), and partly on the erroneous assumption that such statutes contained in the revenue acts merely bar the remedy and do not extinguish the liability.

The rule stated by this Court is that statutes of limitation contained in the taxing acts should be construed liberally in favor of taxpayers. The statutes of limitation contained in the revenue acts were intended by Congress not only to bar the remedy but to extinguish the liability, and facts usually inherent in such a situation as that presented in the case at bar are contributory reasons for deciding the question in favor of the taxpayer.

Finally, it will be submitted that regardless of what may be the conclusion as to the validity of the waiver, it did not authorize the collection of the tax in the present case because it waived assessment only and it should not be extended beyond its plain terms.

The Situation Under the Revenue Act of 1928 with Respect to Waivers Executed After the Statute of Limitations Has Run.

Waivers executed after the enactment of the *Revenue Act of 1928* and after the statute of limitations has run are not valid except when collection was not barred at the time of the enactment of the *Revenue Act of 1926* and when executed between May 29, 1928 and January 1, 1929.

When the *Revenue Act of 1928* was pending in Congress the Treasury Department made an effort to have Congress ratify waivers executed after the statute of limitations had run. This Congress refused to do.

In *Section 506 of the Revenue Act of 1928* which bears the heading: "WAIVERS AFTER EXPIRATION OF PERIOD OF LIMITATION", Congress made certain provisions for such waivers.

Section 506 (c) of the Revenue Act of 1928 provides as follows:

> "The amendments made by this Section to the *Revenue Act of 1926* shall not be construed as in any manner affecting the validity of waivers made prior to the enactment of this Act which shall be determined according to the law in existence at the time such waiver was filed."

Further in *Section 506 of the Revenue Act of 1928*, Congress provided that *Section 278 of the Revenue Act of 1926* is amended as follows:

> "(f). Any agreement which would be within the provisions of *Subdivision (c) or (d)* of this Section but for the fact that it was executed after the expiration of the period of limitation extended by such agreement, shall be valid and effective according to its terms if entered into after the enactment of the *Revenue Act of 1928* and before January 1, 1929."

Notwithstanding the great effort made by the Treasury Department to induce Congress to validate waivers executed after the statute of limitations had run, the greatest length to which it would go was to validate such waivers only in the event that they were executed between May 29, 1928 and January 1, 1929.

In *Section 506 (a) of the Revenue Act of 1928* it is provided that *Section 278 of the Revenue Act of 1926* is amended as follows:

> "Where *before the expiration of the time prescribed in Section 277* for the assessment of the tax, both the Commissioner and the taxpayer have con-

> sented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made *before the expiration of the period* previously agreed upon." (Italics ours.)

From the above it appears entirely clear that if a waiver was executed after the statute of limitations had run and while the *Revenue Act of 1928* was in force, Congress intended it to be invalid unless it was executed between May 29, 1928 and January 1, 1929.

Under the Revenue Act of 1926.

By the provisions of the *Revenue Act of 1926* waivers executed after the enactment of the *Revenue Act of 1926* and after the statute of limitations has run are invalid if the statute had run when that Act was enacted.

On page 20 of its brief, filed in this case, respondent states that:

> "All waivers given after the enactment of *Section 250 (d) of the Revenue Act of 1921 supra* are 'statutory waivers' and that the terms of the statute must be considered in connection with every waiver."

All waivers must comply with the provisions of the statute and if they do not they are not statutory waivers.

In *Jacobs Bros. Co., 19 B. T. A. 315*, the Board of Tax Appeals held that the statutory provisions of the *Revenue Act of 1926* rendered invalid a waiver executed after its enactment and after the statute of limitations had expired where collection was barred when the 1926 Act was enacted. The reasoning of the Board of Tax Appeals is as follows:

"On this point we think that *Section 278 (e)* is controlling. That section provides as follows:

"(e). This section shall not bar a distraint or proceeding in court begun before the enactment of the *Revenue Act of 1924;* nor shall it authorize the assessment of a tax or the collection thereof by distraint or proceeding ~~was barred by the statutory per~~ of the enactment of this Act such assessment, distrain or proceeding was barred by the statutory period of limitation properly applicable thereto, *unless prior to the enactment of this Act* the Commissioner and the taxpayer agreed in writing thereto, or (2) contrary to the provisions of *subdivision (a) of Section 274* of this Act. (Italics ours.)

"At the time of the enactment of the *Revenue Act of 1926* the collection of the tax was already barred by the statutory period of limitation properly applicable thereto and the Commissioner and the taxpayer did not agree in writing prior to the enactment of the *Revenue Act of 1926* to any extension of time for the collection of the tax after the expiration of the statutory period. *Subdivision (e) of Section 278* is a limitation upon all the other provisions of *Section 278 of the Revenue Act of 1926,* and under that subdivision any consent or agreement by the Commissioner and the taxpayer with respect to the assessment or collection of the tax must be made prior to the enactment of that Act in order to have effect, provided at the time of the enactment of the Act the assessment or collection was barred. This being true, it is not necessary for us to discuss the effect of the repeal of *Section 1106 of the Revenue Act of 1926* by the *Revenue Act of 1928,* nor is it necessary for us to discuss the applicability of our decision in the *Joy Floral Co. case.*

"In view of the foregoing, it is our opinion that the collection of the deficiency is barred by the statute of limitations."

The reasoning of the above opinion of the Board of Tax Appeals seems logically unassailable. *Section 278 of the Revenue Act of 1926* contained the statutory provisions for waivers and, as said by the Board, that section provided that if the tax was barred when it was enacted, a waiver should not be valid unless the same was executed prior to the enactment of the *Revenue Act of 1926*.

By the Provisions of the Revenue Act of 1924 Waivers Given After Its Enactment Are Invalid If Collection Was Barred at the Date of Its Enactment.

Section 278 of the Revenue Act of 1924 is the section which contains the statutory authority for waivers. *Subdivision (e)* of that section provides:

> "This section shall not (1) authorize the assessment of a tax or the collection thereof by distraint or by a proceeding in court if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the period of limitation then in existence."

The reasoning of the Board of Tax Appeals with respect to a similar provision in the *Revenue Act of 1926* would seem to be applicable here and compare your Honors' construction of a part of this section in *Russell v. United States, 278 U. S. 181.*

Waivers Executed After the Statute of Limitations Has Run and Prior to the Enactment of the Revenue Act of 1924.

The argument for the validity of waivers executed after the statute of limitations has run and prior to the enactment of the *Revenue Act of 1924* is (1) there is no statutory provision expressly prohibiting such waivers and *Section 250 (d) of the Revenue Act of 1921* should

be construed to authorize them, and (2) the statutes of limitation contained in the Revenue Acts merely bar the remedy and do not extinguish the liability.

It will be conceded that taxes do not depend upon contract but upon statute. A citizen cannot contract with a government official, except under clear and unambiguous statutory authority, to pay a specified amount of taxes. Unless the taxing power of the Nation has imposed the tax by statute in a constitutional manner the citizen is not liable and if that taxing power has extinguished the citizen's liability for a tax he cannot recreate that liability by contract except in a manner clearly provided by statute and in conformity to the Constitution. Congress did not expressly provide by statute for waivers after the statute of limitations had run except in the manner before mentioned in the *Revenue Act of 1928* wherein it validated waivers executed between the date of the enactment of that Act, viz: May 29, 1928, and January 1, 1929. It refused to validate such waivers given prior thereto.

It is contended by the respondent that when Congress provided in *Section 250 (d) of the Revenue Act of 1921* that the statute of limitations should be five years after the return was filed "unless both the Commissioner and the taxpayer consent in writing to a later determination, assessment, and collection of the tax", it intended that this consent might be entered into after the statute of limitations has run.

Much reliance is placed by the respondent on the case of *W. P. Brown & Sons Lumber Company*, which decision appears in the appendix to respondent's brief and which is now pending herein on certiorari.

In that case the Court advanced as a reason for its construction of *Section 250 (d)* in favor of the Government that "statutes imposing limitations upon action by the United States are to be strictly construed in favor of the Government". In this the Court was in error.

In *United States v. Updike, 281 U. S. 489*, this Court at page *496* restated the contrary rule, saying:

> "In any event, we think this is the fair interpretation of the clause, and the one which must be accepted especially in view of the rule which requires taxing acts, *including provisions of limitation imposed therein*, to be construed liberally in favor of taxpayers. *Bowers v. New York & Albany Co., 273 U. S. 346, 349.*" (Italics ours.)

It is submitted that the rule requiring a liberal construction of all of the provisions of a taxing act in favor of the taxpayer is founded upon the public policy which underlies our Government and which is manifested in the provisions of our Constitutions for the protection of private property. Our theory of Government is that individual initiative should be encouraged and that private property should be protected, and under that theory we have attained the enjoyment of a material prosperity hitherto unknown in the history of mankind. It is well known that there is a tendency to "pork-barrel" public money and these considerations compose the main arguments against Government ownership and socialism. It is probable that these considerations of public policy underly the rule that tax laws are to be construed liberally in the favor of taxpayers and that private property is not to be taken for public use unless the law clearly and without ambiguity takes it.

It is further submitted that fairness and the facts usually inherent in such a situation as that presented in the case at bar require a construction in favor of the taxpayer.

Usually the citizen who deals with his Government has a great respect for it and is prone to comply immediately with requests of its agents. When its agents ask for waivers after the statute of limitations had run, they were usually executed. In many cases the taxpayers, who executed these waivers, did not know that the statute of limitations had run.

In the articles on waivers in *27 R. C. L., at page 909* it is said:

> "No man can be bound by a waiver of his rights unless such waiver is intentionally made with full knowledge of the rights which he intends to waive and the fact that he knows his rights and intends to waive them, must plainly appear."

While it does not appear in the case at bar that the taxpayer knew the statute of limitations had run when he executed the waiver, and while it may be urged that he was bound to know the law, nevertheless the fairness underlying the above rule of law is obvious and for all practical purposes, so far as the taxpayer is concerned, it is immaterial to him whether he was ignorant of a state of facts or a rule of law.

The statute of limitations never ran in the case of a fraudulent return and if the agents of the Commissioner saw fit to make a charge of fraud against a taxpayer they could make great trouble for him. Even if taxpayers did know that the statute of limitations had run, nevertheless

when a Revenue Agent demanded a waiver they sometimes feared a charge of fraud if they did not comply with the request and the imposition of a fraud penalty upon them or possibly indictment. In some cases revenue agents even threatened to impose a fraud penalty and to make a charge of fraud unless waivers were executed. (See the case of *Diescher v. Commissioner, 18 B. T. A. 353.)*

Until the decision of this Court in *Bowers v. New York & Albany Lighterage Company, 273 U. S. 346*, the Treasury Department believed that if it assessed a tax in time it could be collected at any time by distraint. That case was decided by this Court on February 21, 1927. It is true that the Treasury Department had persisted in its belief notwithstanding the decision of the District Court to the same effect *(4 Fed. (2d) 604)*, which was rendered on February 13, 1925, and which merely followed the decision of the Court of Appeals for the Second Circuit in *Seaman v. Bowers, 297 Fed. 371*, which was decided March 17, 1924. Because of the Treasury Department's persistent claim that if it assessed a tax in time it could collect it at any time, and because it did not abandon this idea until the decision of this Court in the *Bowers case*, rendered February 21, 1927, a multitude of cases existed in which it had assessed the tax but did not attempt to collect it until after the statute of limitations had barred its collection. The Treasury Department's agents, however, honestly believed that because the assessment was made in time the collection of the tax was not barred and they so informed taxpayers and at the same time told taxpayers that unless waivers were signed they would proceed to make immediate collection. Of course, they had then no right under the law to make col-

lection but they honestly believed they did have this right and that they were refraining from doing that which they had a legal right to do in consideration of waivers executed by taxpayers. Although such waivers were executed after the statute of limitations had run on the right to collect the tax, yet neither party knew it at the time. The collector demanded waivers believing that he had a right to collect the tax. He had in one hand a distraint warrant with which he could wreck the taxpayer's business unless waivers were given. In cases where the taxpayer was unable to pay there was nothing for him to do but execute the waiver demanded.

The Statute of Limitations Contained in the Revenue Acts Not Only Bars the Remedy But Also Extinguishes the Liability.

Another ground of the decision in the case of *W. P. Brown & Sons Lumber Company*, much relied on by the respondent, is that the statute of limitations contained in the Revenue Acts merely barred the remedy and did not extinguish the liability. If this theory is correct, it is difficult to understand why the taxpayers were allowed to recover in the cases of *New York & Albany Lighterage Company v. Bowers*, 273 U. S. 347; *Russell v. United States*, 278 U. S. 181, and many lower Court decisions. In the supplemental and reply brief filed by the petitioner at the bar this subject is discussed and that discussion is contained therein at pages 10 to 18 and is not repeated here.

To that discussion, however, we would add that it was generally considered by the bar that the statutes of limitation contained in the Revenue Acts not only barred the remedy but also extinguished the liability, and as pointed

out in the petitioner's supplemental and reply brief it was so decided in *Bashara v. Hopkins, 290 Fed. 592.* It was also so decided in *Citizens Bank v. Miller Link Lumber Company, 16 Fed. (2d) 163, 164,* and in *John Barth Company v. United States, 27 Fed. (2d) 782, 784* (reversed on other grounds in *279 U. S. 370).* Force is lent to this view by the statute prohibiting an injunction against the collection of any internal revenue tax.

The statute of limitations contained in the Revenue Acts did not effectually bar the remedy. If the Collector made up his mind to collect the tax after the statute of limitations had run, the taxpayer could not prevent him. The fact that the statute of limitations had run could not be used by the taxpayer to procure an injunction but, as held by this Court in *Graham v. Dupont, 262 U. S. 234,* the taxpayer's remedy was to pay the tax and sue to recover it. The real substance of the statute of limitations contained in *Section 250 (d) of the Revenue Act of 1921* was that while it did not effectually bar the remedy, yet it could be made the basis of an affirmative action to recover the tax paid after the statute had run. This is not the case with statutes of limitation which merely bar the remedy. Such statutes do not form the basis for an affirmative action.

In the case of *Toxaway Mills v. United States, 61 Ct. Cl. 363,* the Court of Claims first advanced the theory that the statute of limitations contained in *Section 250 (d) of the Revenue Act of 1921* merely barred the remedy and did not extinguish the liability. This Court promptly granted a certiorari, and after the enactment of the *Revenue Act of 1926* the case was reversed upon confession of error, but the legislative proceedings surrounding the

enactment of *Section 1106 (a) of the Revenue Act of 1926* show that Congress considered the view expressed by the Court of Claims in the case of *Toxaway Mills* to be unsound.

The Conference Report, presenting the bill to the House, stated in part *(House Report 356, p. 55)*:

> "Amendment 170: This amendment provides that the bar of the statute of limitations against the United States and against the taxpayer shall operate to bar the remedy and also to extinguish the liability. This amendment is deemed advisable because of an opinion in a recent decision in the Court of Claims *(Toxaway Mills v. United States)*. Although in a case presenting the specific point this opinion very probably would not be followed by the Supreme Court. (See Taft C. J., in *Graham v. Dupont, 262 U. S. 234, 256 and 258.)*"

It is thus manifest that the opinion of the House Conferees was that the view of the Court of Claims was wrong and that the statute of limitations did extinguish the liability and they considered *Section 1106 (a) of the Revenue Act of 1926* to be declaratory of existing law.

When the same section came up in the United States Senate, Senator Reed of Pennsylvania, said:

> "In a recent decision in the Court of Claims *(Toxaway Mills v. U. S.)*, it has been held in substance that after the statute of limitations has run against the collection of a tax the Collector may nevertheless issue his distraint and collect the tax by a distraint, and then if the taxpayer brings suit against the United States to recover it back, he, being the plaintiff, cannot plead the statute of limitations, although the United States would have been barred from a suit for the tax because the statute had run. It is a preposterous result it seems to me, and a very great

hardship to the taxpayer to allow such a condition to continue, and while I do not think we ought to allow even ~~such~~ a possibility that it will not, remain and we ought to correct it now." (C. B. Vol. 6, pt II, p. 353.)

It is, therefore, submitted that the statute of limitations contained in *Section 250 (d) of the Revenue Act of 1921* was intended not only to bar the remedy, but to extinguish the liability.

The Provisions of the Revenue Acts of 1926 and 1924 Dealing with Waivers and the Provisions of the Revenue Act of 1921 Are in Pari Materia and Should Be Considered Together.

In the case of *Joy Floral Company v. Commissioner, 29 Fed. (2d) 865*, the Court quotes as follows from Chief Justice Marshall in *Alexander v. Alexandria, 5 Cranch. 7:*

> "It is to be observed that acts in *pari materia* are to be construed together as forming one act. If, in a subsequent clause of the same act, provisions are introduced, which show the sense in which the legislature employing doubtful phrases previously used, that sense is to be adopted in construing those phrases. Consequently, if a subsequent act on the same subject affords complete demonstration of the legislative sense of its own language, the rule which has been stated requiring that the subsequent should be incorporated into the foregoing act, is a direction to courts in expounding the provisions of the law."

Again the Court quotes the following from *25 R. C. L., p. 1064, Section 288:*

> "If it can be gathered from a subsequent statute in *pari materia* what meaning the legislature attached to the words of a former statute, that will amount to a legislative declaration of its meaning, and will govern the construction of the first statute."

The decision in the *Stange case*, which is now before your Honors for review, and the decision of the Court of Appeals of the District of Columbia in the *Joy Floral Company case* were both considered by the Circuit Court of Appeals for the Seventh Circuit in the case of *Pictorial Printing Company v. Commissioner, 38 Fed. (2d) 563*, and the Court said:

> "For the reasons stated in the said opinion of the Court of Appeals of the District of Columbia, and in the above cited cases in which it was followed, we are of the opinion that the correct rule was there announced, and that the Commissioner takes nothing by consent first entered into after the limitation had expired."

The Court of Claims in its opinion in the case at bar, stated:

> "We think that a waiver of the statute of limitations is a contract, and that even if the statute has run, the moral obligation to pay a tax properly assessed is sufficient to constitute a consideration."

In the case of *White v. Hood Rubber Company, 280 U. S. 253*, this Court said that waivers were not contracts, saying in part:

> "The instruments were nothing more than what they were termed on their face—waivers."

In the article on "*Waivers*", *40 Cyc., at pages 263, 264*, it is said:

> "In the absence of all conduct creating an estoppel, a waiver should be supported by an agreement founded upon a valuable consideration, although a consideration, such as is necessary to support a contract, is not always essential."

Waivers executed before the statute of limitations has run are supported by a consideration consisting of fore-

bearance on the part of the Commissioner to assess or collect the tax, but if the Commissioner's right under the statute to do these things has become lost and extinguished, it is difficult to conceive what consideration there is to support a waiver. Taxes are not debts and if the statutory law which creates them also extinguishes them by efflux of time the law must be read as a whole and not only the remedy but the right being extinguished no moral consideration can be adduced.

Regardless of What May Be the Conclusion As to the Validity of a Waiver Executed After the Statute of Limitations Has Run and Before the Enactment of the Revenue Act of 1924, the Waiver in the Present Case Only Waived Assessment and Did Not Waive Collection.

Unless a waiver of collection can be read into a waiver of assessment and, unless the waiver in the present case can be extended beyond the plain meaning of its words, then the collection of the tax in the case at bar was not authorized by the waiver.

The waiver was on a form drafted by the Treasury Department and presented to the taxpayer to sign. It should be construed strictly against the party drafting it and liberally in favor of the taxpayer.

The reason the waiver did not provide for collection of the tax is probably to be found in the fact that until this Court's decision, affirming the lower Court, in the case of *Bowers v. New York & Albany Lighterage Company, 273 U. S. 347*, the Treasury Department was stubbornly of the opinion that if it assessed a tax in time there was no limitation on its right to collect that tax by suit. Consequently it thought that provisions for collection in waiv-

ers were not necessary. It was clearly mistaken in this unfounded view of the law and in *Bowers v. New York & Albany Lighterage Company,* this Court did not relieve it from the consequences of that mistake. It should not be relieved from the consequences of that mistake in the case at bar by reading the word collection into a waiver when that word is not there and when it was omitted because of a misunderstanding of the law.

There is judicial authority that waivers are not to be construed or extended beyond the fair import of their terms *(Blatchford v. Harris, 115 Ill. App. 160),* and this is particularly true of tax laws which require liberal construction in favor of taxpayers. Then, too, the other rule requiring the construction of an instrument against the party drafting it is also applicable.

CONCLUSION.

In conclusion it is submitted that the terms of the statute must be considered in connection with every waiver.

The statutory provisions contained in the *Revenue Act of 1921* differ from those contained in the *Revenue Acts of 1924 and 1926.*

The provisions of the *Revenue Acts of 1924 and 1926* clearly invalidate waivers given after the statute of limitations had run if the collection of the tax was barred when those acts were enacted.

The *Act of 1921* neither invalidates such waivers in express terms nor does it authorize them in express terms, but it is contended that it should be construed to invali-

date them because (1) the provision in it authorizing waivers is in *pari materia* with similar provisions of the *1924 and 1926 Acts* which indicate the legislative intent to invalidate such waivers; (2) Unlike general statutes of limitation which are to be construed in favor of the Government, the special statutes of limitation contained in taxing acts are to be liberally construed in favor of taxpayers; (3) The statutes of limitation contained in the Revenue Acts were intended to extinguish the liability as well as to bar the remedy, and (4) the circumstances under which such waivers were usually executed are additional reasons why the *1921 Act* should be construed as contended for by the taxpayer.

In any event, it is an elementary rule of law, as stated in the *Article on "Waivers", 40 Cyc., at pages 263, 264,* that, "in the absence of all conduct creating an estoppel a waiver should be supported by an agreement founded upon a valuable consideration".

There is no consideration for a waiver given after the statute of limitations has run. The Commissioner had then no legal right to assess the tax and could refrain from doing nothing which he had a legal right to do. There was no estoppel because there was nothing on which he could have relied to his detriment. On the part of the taxpayer the waiver was a mere gratuity and not supported by any consideration.

Finally, it is submitted that in any event the waiver in the case at bar is insufficient to authorize collection because it did not waive the statute of limitations on collection. It should not be extended beyond its terms and words should not be read into it which are not there. No

excessive hardship can come to the Government from so holding because even where waivers provided for assessment only, if the assessment was made after the enactment of the *Revenue Act of 1924*, that Act allows the Government six years from the date of assessment in which to collect the tax, but this provision does not apply to assessments made prior to the enactment of the 1924 Act. *(Russell v. United States, 278 U. S. 181.)*

All of which is respectfully submitted.

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ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

BRIEF AS AMICI CURIAE ON BEHALF OF FRANK A. VANDERLIP, A. B. HULL, FLINT MILLS AND OTHERS.

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BRIEF OF AMICI CURIAE.

STATEMENT.

This brief of Wm. E. Leahy and Wm. J. Hughes, Jr., as amici curiae, on behalf of Frank A. Vanderlip, A. B. Hull, Flint Mills and others similarly situated is respectfully prayed to be considered in the determination of the issues herein.